

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3887 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

S.T WORKERS' UNION

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Appearance:

MR SN SHELAT for Petitioner  
NOTICE SERVED for Respondent No. 1  
MR HK RATHOD for Respondent No. 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/12/97

ORAL JUDGEMENT

This petition, under Article 227 of the Constitution of India, challenges the award dated March 29, 1986, passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No.865 Of 1982.

(2) The respondent-employee is a Conductor under the Gujarat State Road Transport Corporation (hereinafter

referred to as "the Corporation"). The Corporation initiated a departmental inquiry against the respondent charging him with the misconduct of attempting to cheat the Corporation, inasmuch as when the respondent was on duty on June 1, 1979 on the Nadiad-Tharad route, it was found, on checking the bus, that the respondent had collected fare of Rs.10.40 ps. from two passengers travelling from Ahmedabad to Mehsana, but the respondent had not issued them the tickets till the time of checking, and gave them the tickets on seeing the Checking Inspector, and thus he had attempted to cheat the Corporation. The Corporation held the respondent to be guilty of the charge levelled against him and on the basis of that finding, imposed upon the respondent the penalty of withholding his increments for five years with permanent effect.

The aforesaid order came to be challenged before the Industrial Tribunal, upon a reference under Section 30(1) of the Industrial Disputes Act, 1947. By the impugned award, the Tribunal held that there was no misappropriation of any amount, though there was some negligence on the part of the respondent. Hence the Tribunal found that the penalty of withholding increments for five years with permanent effect was very harsh in the facts and circumstances of the case, since it would mean heavy recurring loss to the respondent for the rest of his service-career, and also on his retirement benefits. Hence, the Tribunal set aside the said punishment and imposed the penalty of withholding the increments for three years without future effect.

It is the aforesaid award of the Tribunal which is challenged in the present petition.

(3) The learned Counsel for the petitioner has vehemently submitted that as per the law laid down by a Division Bench of this Court in the case of Gujarat State Road Transport Corporation versus Prbhashanker K. Acharya, reported in 1992 (2) G.L.H. 354, the Tribunal had no jurisdiction to interfere with any penalty lesser than the order of discharge or dismissal and, therefore, the impugned award deserves to be set aside.

(4) It is true that in the aforesaid decision, the Division Bench considered the following question:-

"Is it within the ambit of the Labour Court/Industrial Tribunal's jurisdiction to interfere with the employer's discretion in the field of disciplinary jurisdiction and reduce the

penalty imposed by the employer after the charge of misconduct was proved at a properly held domestic enquiry even when the punishment imposed is short of dismissal or discharge and the Labour Court/Industrial Tribunal has come to the conclusion that the enquiry was in accordance with the principles of natural justice and finding of guilt was not perverse or mala fide?"

While the Division Bench allowed the petition of the Gujarat State Road Transport Corporation challenging the Award of the Tribunal interfering with the order of the punishment other than that of discharge or dismissal, for arriving at the said conclusion two separate judgments were delivered by the Hon'ble Judges constituting the Division Bench. The principles laid down in the judgment of Hon'ble Mr.Justice P.M.Chauhan are contained in para 18 thereof, whereas the principles laid down by Hon'ble Mr.Justice A.M.Ahmadi (as His Lordship then was) are contained in para 7 of the judgment Hon'ble Mr.Justice P.M. Chauhan held that the jurisdiction of the Labour Court and the Industrial Tribunal to interfere with the finding of misconduct and order imposing the punishment other than the punishment of discharge or dismissal may be exercised within the parameters indicated in para 18 of the judgment. Some of the illustrative circumstances enumerated in the aforesaid judgment under which the Labour Court or the Industrial Tribunal can interfere with the findings of the management, are where finding of guilt is completely baseless or perverse or where punishment is shockingly disproportionate, regard being had to the particular conduct or the past record is such that no reasonable employer would ever impose this penalty in like circumstances unless he is actuated by considerations of victimisation or unfair labour practice, but the Labour Court or the Tribunal cannot interfere with the finding of guilt or the quantum of punishment casually or as if exercising appellate jurisdiction.

In the judgment of the Hon'ble Mr.Justice A.M.Ahmadi, the following principles are laid down:

"It is only in cases of discharge or dismissal that the legislature enlarged the jurisdiction of the adjudicatory forums to interfere with the order of punishment by introducing Section 11-A in the Act. The tendency of the Labour Court/Industrial Tribunal to lightly interfere with the order of punishment, in cases where the punishment inflicted is short of dismissal or

discharge, as if it were exercising appellate jurisdiction must be deprecated. It must be remembered that the quantum of punishment cannot be measured in golden scales and will differ from individual to individual depending on his notions of discipline but the Labour Court/Industrial Tribunal will not be justified in interfering with the employer's order of punishment merely because it would have visited the workmen with a lighter punishment if it were wearing the employer's shoes. It is only in cases where the Labour Court/Industrial Tribunal comes to the conclusion, for reasons to be stated in writing, that the punishment imposed is grossly disproportionate to the proved misconduct, that it may interfere with the order of punishment. Such cases would be far and few. Unfortunately, we have noticed that the Labour Court/Industrial Tribunal freely interferes with the quantum of punishment, some of the cases on hand are examples of unwarranted interference, which has been responsible for generating a lot of avoidable litigation."

Mr.Rathod submitted that in view of the parameters indicated in paragraph 18 of the judgment of Mr.Justice P.M. Chauhan, the Labour Court was justified in interfering with the order of punishment, even though it was short of dismissal or discharge.

(5) Turning to the facts of the present case, it is clear that the Tribunal found that the respondent was not guilty of misappropriation, but the respondent was only guilty of negligence and therefore the punishment of withholding increments for five years with cumulative effect was found to be unduly harsh and disproportionate.

Since the case of the Corporation that the respondent was guilty of an attempt to cheat the Corporation is found by the Tribunal to be without any basis and thus the very foundation of the order of penalty has been knocked out, the penalty of withholding of increments for five years with permanent effect was certainly grossly disproportionate to the charge of negligence. Therefore, the Tribunal was justified in interfering with the order of punishment. It is, therefore, not necessary to consider the submission made by Mr.Rathod that the judgment of Hon'ble Mr.Justice P.M. Chauhan has taken any different view than the view of the aforesaid concurring judgment of Hon'ble Mr.Justice A.M. Ahmadi.

(6) Since the findings given by the Labour Court, both on the question of the finding of guilt and on the question of quantum of punishment, are within the realm of permissible discretion as per the principles enunciated in the aforesaid decision, the award of the Tribunal does not call for any interference, in exercise of the extra-ordinary discretionary jurisdiction of this Court under Article 227 of the Constitution of India.

(7) In view of the above discussion, the petition deserves to be dismissed and is hereby dismissed. Rule is discharged with no order as to costs.

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